



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/26/1112

Re: Property at 31 Adamson Avenue, Kirkcaldy, KY2 5EH (“the Property”)

Parties:

Mrs Sandra Evans, 38 Mannerston Holdings, Blackness, Linlithgow, EH49 7ND (“the Applicant”)

Mr Dylan Foster, 31 Adamson Avenue, Kirkcaldy, Fife, KY2 5EH (“the Respondent”)

Tribunal Members:

Fiona Stephen (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. By application dated 10 March 2026, the Applicant seeks an Eviction Order under Section 51 (1) and Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The application also proceeds in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicant intends to sell the property. The Application is accompanied by a copy of the tenancy agreement and the notice to leave with proof of service. The relevant notice under Section 11 of the Homelessness (etc) (Scotland) Act 2003 is also produced. The Applicant provides a letter from Innes Johnston, Solicitors, dated 9 February 2026 with a market valuation of the Property.
2. The Application was accepted by the Tribunal on 15 May 2026 and referred for determination by the Tribunal.

3. The Respondent was served with the papers (by letterbox service) by Sheriff Officers on 10 August 2026 conform to Execution of Service of the same date.
4. A CMD was fixed for 30 September 2026 at 10am by teleconference call and written representations were to be lodged by the Respondent with the Tribunal by 29 August 2026. No written representations have been received.
5. The Tribunal had before it:
 - (i) The Application Form E;
 - (ii) A Tenancy Agreement between the Applicant and the Respondent dated 4 November 2022 which commenced on the same date;
 - (iii) Confirmation from the Scottish Landlord Register that the Property is registered in the name of the Applicant;
 - (iv) Confirmation that the Applicant owns the Property under Title Sheet (FFE77341).
 - (v) Confirmation from the Landlord that a representative from Premiere Rentals Fife Ltd, Letting Agents, 189 Commercial Street, Kirkcaldy KY1 2NS could appear on her behalf; and
 - (vi) Case Papers.
6. A Case Management Discussion (CMD) took place on 30 September 2026 at 10am by teleconference call. Ms C Marshall from Premiere Rentals Fife Ltd appeared for the Applicant. There was no appearance by the Respondent despite the Tribunal delaying the start of the CMD by a few minutes to give him the opportunity to join the call.
7. The Tribunal explained the purpose of the CMD and the powers of the Tribunal to determine matters. The Tribunal asked various questions about the application.

Case Management Discussion

8. Ms Marshall relied on the application and papers lodged in support of it. She explained that the Applicant is retiring and this is the last property in her property portfolio that she needs to sell. She originally had a property portfolio of around 20 properties which she reduced to 5, and she has been selling one every year for the past 5 years.
9. Ms Marshall explained that she has found it difficult to get hold of the Respondent. He is not answering calls or letters which means the Applicant has been unable to arrange a safety check. Ms Marshall tried to contact the Respondent about today's CMD a week ago but she did not get a response. Ms Marshall also visited the Property last week as she was concerned that the Property had been abandoned but it was clear the Respondent was still living there. Ms Marshall has had no contact with the Respondent since the Notice to Leave was served in December 2025.

10. Ms Marshall stated that the Respondent is currently in rent arrears which can be seen from the rent statement lodged. Ms Marshall has sent out pre-action letters to find out if the Respondent needed help. During the last conversation she had with the Respondent around the date of the Notice to Leave, he said he would pay but that has not come to fruition.
11. The Respondent lives in the Property on his own. It is a one bedroomed flat. He is in and out of employment. Ms Marshall does not know if he is currently in employment. She does not know if that is the reason for the rent not being paid or he is just refusing to pay.
12. Ms Marshall confirmed that the Applicant intends to sell the Property as soon as it is empty and it will be placed on the open market.
13. The Tribunal members adjourned for a short period to discuss matters. On reconvening the Tribunal told Ms Marshall that it was satisfied that the papers were in order and that, in all the circumstances, it was reasonable to grant the order for eviction.

Findings in Fact

14. The Applicant let the property to the Respondent by virtue of a Private Residential Tenancy Agreement dated 4 November 2022 within the meaning of the Act.
15. The Applicant intends to sell the let property.
16. The Applicant is the sole owner of the property and is entitled to sell it.
17. The Applicant wishes to sell the property as she is retiring, and this is the last property in her property portfolio which she needs to sell.
18. The Applicant has competently served a notice to leave on the Respondent dated 12 December 2025 under ground 1 of Schedule 3 of the Act.
19. The Applicant has complied with Section 11 of the Homelessness (etc) (Scotland) Act 2003.
20. On 9 February 2026, Innes Johnston, solicitors provided a valuation for the flat.
21. The Applicant intends to put the Property on the market for sale as soon as she recovers vacant possession of it.
22. The Applicant's letting agent has tried to contact the Respondent on numerous occasions by telephone, email and letter but he has not replied.
23. The Applicant has been unable to arrange a safety check due the lack of engagement by the Respondent.

24. The Respondent was served with a copy of this Application by Sheriff Officer on 10 August 2026 and received intimation of the date of the Case Management Discussion.
25. The Respondent lives in the Property on his own.
26. The Respondent is currently in rent arrears of £4 141.00 and has not paid rent since January 2026 as shown in the rent statement lodged. It is not known if the Respondent is in employment.

Reasons for Decision

27. The Tribunal was satisfied that it could determine matters at the CMD and without a Hearing in terms of Rules 17 and 18 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the procedure rules”).
28. In terms of section 51(1) of the Act, the Tribunal is to issue an eviction order against the tenant of a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies. The Applicant relies on ground 1 of Schedule 3 of the Act in the present case.
29. Ground 1 of Schedule 3 provides:

“1 Landlord intends to sell

- (1) It is an eviction ground that the landlord intends to sell the let property.*
- (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord—*
- (a) is entitled to sell the let property,*
 - (b) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and*
 - (c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.*
- (3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example) –*
- (a) a letter of engagement from a solicitor or estate agent concerning the sale of the let [property,*
 - (b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.”*

30. Sub-paragraph 2 (c) of ground 1 was added by section 43 (3)(a)(iii) of the Coronavirus (Recovery and Reform) (Scotland) 2022. As originally enacted, ground 1 was mandatory so if the Landlord established that they were entitled to sell the property and intended to sell it, the Tribunal was required to issue an eviction order.
31. The amendment added by the 2022 Act has the effect of introducing an element of discretion into ground 1. Establishing the facts in sub paragraphs 2 (a) and (b) is sufficient to make it *prima facie* reasonable to evict. It is then for the tenant to put circumstances to the Tribunal to show otherwise (see *Manson v Turner 2023 UT 328 @ para 7*). Evidence of intention can, by way of example, include a letter of engagement from a solicitor or estate agent concerning the sale of the let property (as set out in ground 1 (3)).
32. Having made the above findings in fact, the Tribunal considered that the Applicant has established that she intends to sell the let property and that she is entitled to do so in terms of ground 1(1) (2) (a) and (b) of Schedule 3 of the Act.
33. The Tribunal considered whether it is reasonable to issue an eviction order in terms of ground 1 (2) (c). In doing so the Tribunal must consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the Tribunal to grant the order or decline to grant the order will be relevant. This is confirmed by one of the leading English cases, *Cumming v Danson [1942] 2 All ER 653 at 655* (which is referred to in the Upper Tribunal case *Manson v Turner 2023 UT 328*) in which Lord Green MR said in an often-quoted passage:

“In considering reasonableness...it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad common-sense way as a man of the world and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account.”

34. The Tribunal took account of the reasons why the Applicant wishes to sell. The Tribunal gave weight to the fact that the Applicant is retiring and has been disposing of her property portfolio for several years. This is the last property within the portfolio that requires to be sold. She intends to market the Property for sale as soon as she recovers possession of the Property. She has obtained a valuation of the Property. The Tribunal took into account that the Respondent has failed to engage with the Applicant at all for many months. He is currently in rent arrears and has not paid rent since January 2026. The Respondent lives on his own in the Property and it is not known if he is in

employment. The Respondent has not lodged a written response, nor did he attend the CMD although he had an opportunity to do so. The Tribunal considered that in light of the information provided by the Applicant and the lack of engagement by the Respondent, it was reasonable to grant the eviction order.

35. In addition to determining that the Applicant has satisfied the requirements of Ground 1 (1) and (2) of Schedule 3, the Tribunal considers that it is reasonable to make an eviction order in terms of Ground 1 (3) for the reasons stated above.

Decision

The Tribunal makes an order for eviction of the Respondent, Mr Dylan Foster from the Property at 31 Adamson Avenue, Kirkcaldy, KY2 5EH.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

**Fiona Stephen
Legal Member/Chair**

**30 September 2026
Date**